



FH

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

DECISION

Case #: MPA - 203333

PRELIMINARY RECITALS

Pursuant to a petition filed on October 4, 2021, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Department of Health Services, Division of Medicaid Services regarding Medical Assistance (MA), a hearing was held on January 5, 2022, by telephone. The hearing was first scheduled to occur on November 30, 2021 but rescheduled, at the request of Petitioner's mother, to allow her additional time to prepare.

The issue for determination is whether Petitioner is entitled to 40 hours per week of comprehensive behavioral treatment for 50 weeks rather than the 30 hours per week for six months that the Department authorized (PA [REDACTED]).

There appeared at that time the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, WI 53703

By: [REDACTED]
Division of Medicaid Services
PO Box 309
Madison, WI 53701-0309

ADMINISTRATIVE LAW JUDGE:

Teresa A. Perez
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a two-year old [REDACTED] resident of Dane County who has a primary diagnosis of autism spectrum disorder.
2. On March 10, 2021, Petitioner underwent a neuropsychological evaluation and was diagnosed with autism spectrum disorder with accompanying language impairment and global developmental delay. The provider who conducted the evaluation concluded that Petitioner “would benefit from intensive/comprehensive (i.e., at least 20 hours per week, year-round) behavioral intervention designed for children with autism that focuses on autism-specific intervention that promotes communication, social interactions, and emotional development.” See Exhibit P-1: Petitioner’s Appeal.
3. As of the date of the hearing, Petitioner had been receiving behavioral therapy since July 2021—typically, two to four hours per day four times per week. His parents have observed significant, favorable changes in Petitioner’s behavior since therapy began including increased adaptability to stressful situations. And, Petitioner’s treatment team has noted that Petitioner has made significant progress in all areas including but not limited to language acquisition and that his parents are very involved and have effectively generalized skills learned in therapy to the home environment.
4. On June 22, 2021, the Wisconsin Early Autism Project filed a request for prior authorization (PA) on Petitioner’s behalf seeking coverage of an average of 40 hours per week of comprehensive behavioral treatment for 50 weeks.
5. On July 29, 2021, the Department approved up to 3,120 units (an average of 30 hours per week) of comprehensive behavioral treatment for six months.
6. On October 4, 2021, Petitioner filed an appeal of the denial.

DISCUSSION

Comprehensive behavioral treatment is covered by Wisconsin Medical Assistance as a Early and Periodic Screening, Diagnostic and Treatment (EPSDT) service. See Wisconsin Admin. Code §DHS 107.22 and Provide On-Line Handbook, Topic #18997. The Department requires prior authorization for comprehensive behavioral treatment and has developed coverage guidelines applied in reviewing those PA requests. Of particular relevance to this case is the coverage guideline that provides that Medical Assistance will authorize “up to 30 hours per week of direct treatment (CPT code 97153) through the member's third birthday and up to 40 hours per week thereafter.” On-Line Handbook, Topic #20477.

Petitioner here has requested 10 more hours per week than the 30 hours authorized by the Department. In a prior authorization case, Petitioner bears the burden of proof. To satisfy that burden, Petitioner must show by a preponderance of the credible evidence that he is entitled to the requested level of service.

The Department submitted a written response to Petitioner’s appeal and in that response, the Department asserted as follows:

The [Department’s Division of Medicaid Services] has reviewed a variety of research publications on behavioral treatment for very young children, and examined the number of weekly intervention hours delivered to subjects under 36 months of age . . . Several intervention studies focused on consultative parent training approaches that involved relatively few intervention hours per week. For more intensive approaches,

contemporary researchers routinely limited treatment to 30 hours per week for children under age 3.

At this time, the DMS has not located adequate research evidence supporting more than 30 hours of direct intervention per week for children under age 3. In addition, it appears that the current judgment of medical researchers is to limit children under 36 months to 30 hours of treatment per week. Taken together, with guidance from Wisconsin Administrative Code DHS 107.035, the provision of more than 30 hours of treatment per week to children under 36 months of age meets the state's definition of an experimental treatment. Experimental treatments are not considered medically necessary under Wisconsin Administrative Code DHS 101.03(96m).

The Department attached a list of citations to the research referenced in its written response. See Exhibit R-1: Consultant Letter, Attachment E.

At hearing, Petitioner's mother confirmed that Petitioner was under age 3. She and [REDACTED], a licensed psychologist with WEAP who serves as the behavioral treatment director on Petitioner's team, both credibly testified to the efficacy of the behavioral treatment Petitioner has received thus far and explained that research generally shows that more treatment is more effective than less treatment for individuals with Petitioner's diagnoses and that early intervention is critical. [REDACTED] also testified that Petitioner's parents have been committed to Petitioner's treatment and adept at generalizing skills that Petitioner has learned in therapy to his home environment. However, Petitioner did not offer any specific evidence or research to refute the Department's position that current relevant studies support authorization of 30 hours per week for children under age 2 or to demonstrate that the Department's policy results in Petitioner being denied medically necessary treatment.

CONCLUSIONS OF LAW

There is insufficient evidence to establish that Petitioner is entitled to Medical Assistance coverage of more than 30 hours per week of comprehensive behavioral treatment for six months.

THEREFORE, it is

ORDERED

Petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 4822 Madison Yards Way, 5th Floor North, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

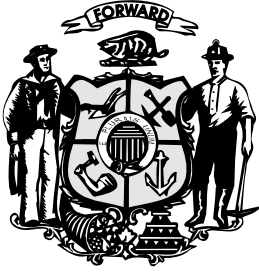
You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, **and** on those identified in this decision as “PARTIES IN INTEREST” **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 21st day of January, 2022


/s

Teresa A. Perez
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator
5th Floor North
4822 Madison Yards Way
Madison, WI 53705-5400

Telephone: (608) 266-3096
FAX: (608) 264-9885
email: DHAmail@wisconsin.gov
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on January 21, 2022.

Division of Medicaid Services